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Board of Vocational Nursing  
and Psychiatric Technicians

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2009-1406

**ANNETTE LEANN JAHNKE  
aka ANNETTE LEANN WESTPHAL  
P. O. Box 3094  
Santa Ana, CA 92703**

**A C C U S A T I O N**

**Vocational Nurse No. VN 228150**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about June 21, 2007, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse Number VN 228150 to Annette Leann Jahnke, aka Annette Lcann Westphal (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on October 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 2892.1 of the Code states, in pertinent part:

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

....

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code provides, in pertinent part, that the record of conviction of a crime shall be conclusive evidence of the facts that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

8. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

....

9. Section 2878.5 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

....

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

....

#### REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 2518.6(b)(4), states:

....

(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

....

Abstaining from chemical/substance abuse; and

....

11. California Code of Regulations, title 16, section 2521, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications,

functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

12. California Code of Regulations, title 16, section 2522 states, in pertinent part:

When considering . . . b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, . . . the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

(7) Number and variety of current violations.

(8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

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1 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
2 Penal Code section 1203.4.

3 (12) Cooperation with the Board and other law enforcement or regulatory  
4 agencies.

5 (13) Other rehabilitation evidence.

#### 6 COST RECOVERY

7 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
8 administrative law judge to direct a licensee found to have committed a violation or violations of  
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
10 enforcement of the case.

#### 11 FIRST CAUSE FOR DISCIPLINE

##### 12 **(January 26, 2010 Criminal Conviction for Possession for Sale of a Controlled Substance 13 on December 4, 2009)**

14 14. Respondent is subject to disciplinary action under Code sections 490 and 2878,  
15 subdivision (f), in that Respondent was convicted of a crime that is substantially related to the  
16 qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

17 15. On or about January 26, 2010, in the Superior Court of California, County of Orange,  
18 in Case No. 09NF3506, Respondent was convicted on her plea of guilty of violating Health and  
19 Safety Code section 11378 (Possession for Sale of a Controlled Substance), a felony.

20 16. The facts that led to Respondent's conviction are that on December 4, 2009, Anaheim  
21 Police Department officers initiated a traffic enforcement stop of a vehicle in which Respondent  
22 was a passenger. Officers made contact with the driver, J.V., who had a valid California driver's  
23 license. The front seat passenger, C.G., was verbally identified, and the back seat passenger,  
24 Respondent, was identified by a California identification card.

25 17. When officers asked all occupants of the stopped vehicle if they were on probation,  
26 parole, or had any cases pending against them, Respondent told officers she had a pending court  
27 case for possession of a controlled substance, petty theft, and vehicle burglary. Officers obtained  
28 consent to search the vehicle from the driver and ordered all occupants to exit the vehicle and sit  
on the curb while officers conducted a search of the vehicle.

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1           18. Inside the vehicle, officers found a glass pipe and a round burnt bowl next to the front  
2 passenger seat. Officers then found a large women's black leather purse near the middle rear  
3 passenger seat and, next to the purse, officers located a "Vaultz" small box carrying case.  
4 Officers asked Respondent if the items belonged to her, and Respondent told officers, "Yeah, I  
5 guess the stuff is mine but I'm not really sure. You can go ahead and search it if you would like  
6 Officer." Officers searched the purse and did not locate anything illegal, they only located a key  
7 ring containing miscellaneous keys on it. Officers attempted to open the box with the keys and  
8 their first attempt failed. Officers asked Respondent if one of the keys on the key ring opened the  
9 box and Respondent became nervous and hesitated to answer. Officers then asked Respondent if  
10 all the keys on the key ring belonged to her, and Respondent responded, "Yes." Officers again  
11 tested each key on the key chain and, after a few attempts, were successful in finding the right  
12 key and were able to unlock the box.

13           19. When officers opened the box, they found zip-lock baggies, a digital scale,  
14 miscellaneous straws, a lighter, \$20 in U.S. currency, a black cloth case, and miscellaneous  
15 devices and measuring instruments. Officers also found inside the box eight separate zip-lock  
16 baggies, approximately 2" X 1-1/2" in size, containing a white crystalline substance resembling  
17 methamphetamine, and a baggie containing a green leafy substance resembling and smelling like  
18 marijuana. Respondent began to cry immediately after officers located the items and contraband  
19 in the box. Officers asked Respondent why she was crying, and she replied, "F\*\*k, I knew I  
20 shouldn't have been selling that stupid s\*\*t (methamphetamine)," at which point Respondent was  
21 arrested. Respondent told officers that all of the contraband belonged to her and that she took full  
22 responsibility for the illegal contraband, except for a pipe found in the front portion of the  
23 vehicle.

24           20. As a result of the above conviction, Respondent was ordered, among other things, to  
25 serve 270 days in the Orange County Jail, with 128 days (64 actual, 64 conduct) credit, jail  
26 sentence to run concurrent with Case No. 09NF3095, detailed in the Third Cause for Discipline,  
27 placed on three years formal probation, ordered to pay various fines, not use unauthorized drugs,  
28 submit to DNA testing, submit to search and seizure, not associate with persons known to be

1 parolees, convicted felons, users or sellers of illegal drugs, not own, use or possess any type of  
2 dangerous or deadly weapon, obey all laws, seek training, school or employment and maintain  
3 residence as approved by the Probation Department, and to report to her probation officers within  
4 48 hours of release.

## 5 SECOND CAUSE FOR DISCIPLINE

### 6 **(January 29, 2010 Criminal Conviction for Petty Theft on October 8, 2009)**

7 21. Respondent is subject to disciplinary action under Code sections 490 and 2878,  
8 subdivision (f), in that Respondent was convicted of a crime that is substantially related to the  
9 qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

10 22. On or about January 29, 2010, in the Superior Court of California, County of Orange,  
11 North Justice Center, in Case No. 09NM14467, Respondent was convicted on her plea of guilty  
12 of violating Penal Code section 484(a)-488 (Petty Theft), a misdemeanor.

13 23. The facts that led to Respondent's conviction are that on October 8, 2009, Buena Park  
14 Police Department officers were dispatched to the Target Department Store (Target) on  
15 Orangethorpe Avenue in Buena Park, California, in reference to a theft that had occurred.

16 24. When officers arrived at Target, Loss Prevention Staff (Staff) informed them that  
17 they witnessed through the closed circuit television network a subject (Respondent) enter the  
18 store, walk to the clothing department, take several items, and walk out of the store without  
19 paying for the items. Staff informed officers that Respondent was just outside the store and  
20 detained her until police arrived.

21 25. The officers interviewed Respondent, who told them that she and her friend, "Sticks,"  
22 entered the store together, took several items from shelves, threw them in a cart, and that  
23 Respondent thought "Sticks" was going to pay for the items. Respondent then told officers a  
24 different story, that "Sticks" proposed that she would give Respondent her bus pass if Respondent  
25 walked out of the store with the items and that, since Respondent needed a bus pass to get home,  
26 Respondent agreed to take the items from the store without paying for them. Respondent exited  
27 the store with a pair of blue jeans and was detained by Target staff.

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26. As a result of the above conviction, Respondent was sentenced to serve 30 days in the Orange County Jail, with 30 days credit for time served, and ordered to pay various fines.

### THIRD CAUSE FOR DISCIPLINE

**(January 29, 2010 Conviction for Receiving Stolen Property and for Vandalism over \$400  
on October 26, 2009)**

27. Respondent is subject to disciplinary action under sections 490 and 2878, subdivision (f), in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

28. On or about January 29, 2010, in the Superior Court of California, County of Orange, Case No. 09NF3095 FA, Respondent was convicted on her plea of guilty of violating Penal Code sections 496(a) (Receiving Stolen Property) and 594(a)/(b)(1) (Vandalism Over \$400), felonies. Counts 1, 4, 5 and 6 (Penal Code sections 459-460(b) [burglary], 484(a)-488 [petty theft], Health and Safety Code section 11364 [possession of drug paraphernalia], and Vehicle Code section 14601.1(a) [driving when privilege suspended or revoked]), were dismissed pursuant to a plea agreement.

29. The facts that led to the conviction are that on October 26, 2009, Anaheim Police Department officers responded to a call of a burglary in progress at the Royal Pacific Motel located at 916 S. Beach Blvd., Anaheim, California. The reporting party advised the dispatcher that two subjects were burglarizing an orange Ford Mustang and were just about to leave in a silver Ford Escort bearing California license plate No. 5WFM402. As officers were headed for the motel, they spotted the suspect vehicle traveling north on Beach Boulevard and the officers initiated a traffic stop on the vehicle and detained three subjects that were traveling in the vehicle, one of which was Respondent.

30. Different officers arrived at the Royal Pacific Motel where they located an orange 2004 Ford Mustang bearing California license plate No. 5E0U565 in the parking lot and observed that the front driver's side window and rear quarter windows were smashed with glass on the ground and in the vehicle. Officers observed a red brick on the ground under the driver's door.



1        31. The reporting party (R.P.) contacted officers and told officers that he observed  
2 suspect R.E.W., who was wearing an orange shirt with a black hoodie, and suspect J.D. throw a  
3 red brick at the driver's side window of the Mustang numerous times, breaking the window. R.P.  
4 then saw suspect R.E.W. open the hood of the mustang and R.E.W. appeared to be pulling  
5 something from the engine compartment. R.P. then observed a female, later identified as  
6 Respondent, drive up in a silver Ford Escort bearing California plate No. 5WFM402. Respondent  
7 was observed by R.P. to exit the Ford Escort, look into the Ford Mustang and point to things  
8 inside the vehicle. It appeared to R.P. that Respondent was telling R.E.W. what to take from the  
9 vehicle. Respondent was then observed by R.P. to get back into the Ford Escort and observed  
10 R.E.W. remove items from the interior of the Ford Mustang and place the items in the Ford  
11 Escort. R.P. was on the phone with police dispatch when he observed the Ford Escort leave the  
12 parking lot with R.E.W. and Respondent.

13        32. Police officers drove R.P. to the place where the Ford Escort had been stopped for a  
14 field show up. R.P. positively identified Respondent as the driver of the Escort who had pointed  
15 out what items to take to R.E.W. R.P. also positively identified R.E.W. as the person who  
16 smashed the window of the Ford Mustang and took the items from the vehicle. R.E.W. and  
17 Respondent were handcuffed and placed under arrest.

18        33. While seated in the back of a police unit, Respondent was observed by officers  
19 kicking out the passenger side rear window of the unit with her feet. Respondent was observed  
20 kicking the window four times, breaking the window of the police unit. Respondent was then  
21 taken out of the police unit. Respondent was combative, not following officers' orders, and her  
22 legs had to be restrained with a leg hobble restraint for her and officers' safety.

23        34. Officers interviewed Respondent, who told them that the Ford Escort belonged to her  
24 even though it was registered in someone else's name. When asked if her driver's license was  
25 suspended, Respondent said, "Yes it is, but I didn't do anything." Officers asked Respondent if  
26 they could search her car, and she stated, "Um, yes." Officers asked Respondent to tell them  
27 what happened while she and her companion were at the Royal Pacific Motel. Respondent told  
28 officers that she did not know what happened, that she had gone there to pick up her boyfriend,

1 R.E.W. Respondent further told officers that the night before, she and R.E.W. had gotten into a  
2 fight, that she left the motel and parked her vehicle in the parking lot of a nearby liquor store,  
3 where she spent the night, and that she received a call from R.E.W. in the morning to come pick  
4 him up. Respondent told officers that when she drove up to the motel to pick up R.E.W., that she  
5 got out of her car and waited for R.E.W. to get his "s\*\*t." Respondent told officers that R.E.W.  
6 walked away and came back with "s\*\*t." When officers asked Respondent what she meant by  
7 "s\*\*t," she said it was a bunch of his property. Respondent told officers that after R.E.W. got  
8 into her car, she drove away.

9 35. As a result of the above conviction, Respondent was sentenced to serve 270 days in  
10 the Orange County Jail, with 128 days (64 actual, 64 conduct) credit, and ordered that the jail  
11 sentence run concurrent with Case No. 09NF3506, which is detailed above in the First Cause for  
12 Discipline. Respondent was also ordered, among other things, to pay various fines, submit to  
13 DNA testing, not use unauthorized drugs, narcotics, or controlled substances, to submit to drug or  
14 narcotic testing as directed probation or police officer, submit to search and seizure, cooperate  
15 with probation officer in any plan for psychiatric, psychological, alcohol and/or drug treatment, or  
16 counseling, seek training, schooling or employment and maintain residence as approved by the  
17 probation department. Respondent was also ordered not to associate with persons known to be  
18 parolees, convicted felons, users or sellers of illegal drugs, not own, use or possess dangerous or  
19 deadly weapons, and obey all laws.

#### 20 **FOURTH CAUSE FOR DISCIPLINE**

##### 21 **(Unprofessional Conduct - Commission of an Act Involving Dishonesty)**

22 36. Respondent is subject to disciplinary action pursuant to Code section 2878(a) on the  
23 grounds of unprofessional conduct, as defined by Code section 2878(j), in that on or about  
24 October 8, 2009, October 26, 2009, and December 4, 2009, Respondent committed acts involving  
25 dishonesty, as detailed in paragraphs 14-35, above, which are incorporated here by reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Possession of a Controlled Substance)**

3 37. Respondent is subject to disciplinary action under Code section 2878(a) on the  
4 grounds of unprofessional conduct, as defined by Code section 2878.5(a), in that on or about  
5 December 4, 2009, she possessed a controlled substance, methamphetamine, as is more fully  
6 detailed at paragraphs 14 through 20, which are incorporated here by reference.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Conviction of a Drug or Alcohol Related Crime)**

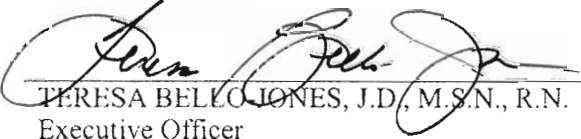
9 38. Respondent is subject to disciplinary action under Code section 2878(a) on the  
10 grounds of unprofessional conduct, as defined by Code section 2878.5(c) in that on or about  
11 January 26, 2010, she was convicted of possessing a controlled substance for sale, as is more fully  
12 detailed at paragraphs 14 through 20, above, which are incorporated here by reference.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
16 issue a decision:

- 17 1. Revoking or suspending Vocational Nurse Number VN 228150, issued to Annette  
18 Leann Jahnke, aka Annette Leann Westphal;
- 19 2. Ordering Annette Leann Jahnke, aka Annette Leann Westphal, to pay the Board of  
20 Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and  
21 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: November 22, 2010

24   
25 TERESA BELCO JONES, J.D., M.S.N., R.N.  
26 Executive Officer  
27 Board of Vocational Nursing and Psychiatric Technicians  
28 Department of Consumer Affairs  
State of California  
Complainant

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